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October 21, 2010

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Notice of Ex Parte regarding Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109

Dear Ms. Dortch:

On October 20, 2011, Jorge Bauermeister, Puerto Rico counsel to San Juan Cable LLC d/b/a OneLink Communications ("OneLink"), James Stenger of Chadbourne and the undersigned met separately with (1) Margaret McCarthy of Commissioner Copps' office, (2) Angela Kronenberg of Commissioner Clyburn's office, and (3) Patrick Halley and Joseph C. Cavender of the Wireline Competition Bureau to discuss the points set forth in the attached document.

Should additional information be necessary in connection with this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/ Aaron M. Bartell

Aaron M. Bartell

Counsel to San Juan Cable LLC d/b/a  
OneLink Communications

Encl.

cc: Ms. Margaret McCarthy  
Ms. Angela Kronenberg  
Mr. Patrick Halley  
Mr. Joseph C. Cavender

**San Juan Cable LLC d/b/a OneLink Communications  
Meeting Regarding USF Reform and  
Implementation of the Connect America Fund in Puerto Rico  
WC Dockets No. 05-337 & 10-90; GN Docket No. 09-51**

October 20, 2011

- I. As the largest cable operator and one of the largest broadband service providers in Puerto Rico, OneLink is deeply familiar with the difficulties of providing broadband and other advanced services in an extremely low-income, majority-minority environment.**
- II. The evidence on the record shows that over 99% of households in Puerto Rico have access to basic broadband, but only 31% of those households are using it. The “broadband gap” in Puerto Rico is a problem of adoption, rather than deployment, and the primary reason for this is extremely low incomes.**
- III. PRTC’s proposal is wrong because it is designed to provide a windfall to PRTC without solving Puerto Rico’s lack of broadband adoption.**
- IV. PRTC’s proposal would perpetuate the inefficient application of universal service support that led the Commission to overhaul the legacy system in the first place.**
- V. PRTC has failed to abide by its commitment to invest \$1 billion in wireline infrastructure over five years, or to use its ample universal service support to extend those facilities throughout the island.**
- VI. PRTC has shown a lack of candor in its requests for additional broadband support and has demonstrated that it cannot be trusted to invest funds made available to it in a manner that will advance universal service.**

Attachment: Proposed language for the forthcoming CAF order

### **Proposed Order Language**

OneLink respectfully requests the Commission to disregard language that PRTC has proposed for inclusion in the forthcoming order in this proceeding, and to use the following language (or words of similar effect) instead:

In 2010, the Commission committed “to ensure that high-quality voice and broadband services are available in insular areas.” *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 4136, ¶ 2 (2010) (“*Insular Order*”). In this proceeding, as we begin to transition the existing high cost support mechanisms to the new Connect America Fund to support broadband deployment, we are confident that the CAF model approach will advance that goal, ensuring that insular areas in need of universal service support for broadband deployment get such funding. However, there is mounting evidence on the record that in Puerto Rico, at least, the so-called “broadband gap” is a problem of adoption, rather than deployment. According to the latest data from Connect Puerto Rico, the entity designated by the Government of Puerto Rico to measure broadband availability and speed on the island, over 99% of households have access to the minimum basic broadband speed of at least 768 kbps downstream and 200 kbps upstream that we proposed in the NPRM (with significantly higher speeds increasingly available in parts of the island and with multiple, competing providers using multiple technologies). However, as of last July, only 31% of those households – less than half of the national average of 67% – subscribe to broadband service. This low level of broadband adoption is caused by the low-income level in Puerto Rico and not by the lack of opportunity to subscribe to existing broadband services. As we noted in the *Insular Order*, Puerto Rico not only has the highest percentage of households living below the poverty level of any jurisdiction reported by the Census Bureau, but it also has the lowest median income. In a recent letter from the Governor of Puerto Rico, he stated that “[w]ith more than 40% of the population [of Puerto Rico] having income below the poverty level, the core driver of [ ] low technology penetration is income.”

In light of these facts, we believe it is necessary and appropriate, on an interim basis, to maintain the baseline amount of broadband support that Puerto Rico will receive after the transition to the CAF at the total level of legacy universal service support that Puerto Rico received in 2010. All amounts above what is called for under the CAF model approach to support deployment of broadband in unserved areas will be devoted to island-wide broadband adoption and education initiatives developed under our concurrent reform of the Lifeline and Link-Up programs and any other broadband adoption programs we may establish. The Commission will reevaluate the need for this additional support at the earlier of five years from the launch of the CAF or when broadband adoption in Puerto Rico reaches a level reasonably similar to the national average broadband adoption rate at that time.

### **Additional Background**

**As the largest cable operator and one of the largest broadband service providers in Puerto Rico, OneLink is deeply familiar with the difficulties of providing broadband and other advanced services in an extremely low-income, minority environment.**

- Although OneLink's service territory encompasses the largest urban center in Puerto Rico, the median household income in OneLink's service area is still only \$21,026, which is just 57% of the closest state's median (Mississippi: \$36,646) and 42% of the national median (\$50,220).<sup>1</sup> In addition, and perhaps somewhat surprisingly, the most recent data available shows that both computer ownership and broadband adoption are actually *lower* in urban and suburban municipalities than in rural municipalities on the island, despite the nearly ubiquitous availability of broadband (at generally higher speeds) in the former areas.<sup>2</sup> As a result, OneLink has first-hand knowledge of the state of broadband in Puerto Rico and significant experience with the causes of, and the challenges posed by, the broadband gap on the island.

**The evidence on the record shows that over 99% of households in Puerto Rico have access to basic broadband, but only 31% of those households are using it. The "broadband gap" in Puerto Rico is a problem of adoption, rather than deployment, and the primary reason for this is extremely low incomes.**

- According to the latest data from Connect Puerto Rico, the entity designated by the Government of Puerto Rico to measure broadband availability and speed on the island, over 99% of households have access to the minimum basic broadband speed of at least 768 kbps downstream and 200 kbps upstream that the proposed in the NPRM (with significantly higher speeds increasingly available in parts of the island).<sup>3</sup> However, as of July 2010, only 31% of those households – less than half of the national average of 67% – subscribe to broadband service.<sup>4</sup> These statistics contradict PRTC's assertion that the solution to the broadband gap in Puerto Rico is to deploy more facilities, while supporting the idea advanced by OneLink and others that the Commission should prioritize broadband adoption and education programs.
- Connected Nation (the parent of Connect Puerto Rico and the single largest contributor of data to the National Broadband Map) filed comments stating that (1) broadband deployment subsidies should be the last resort and a final step in an integrated program that begins with adoption efforts, (2) prioritizing adoption and utilization programs will result in more efficient use of deployment subsidies, and (3) "it would be foolhardy to subsidize broadband access in an area where no broadband adoption and utilization program is in place."<sup>5</sup> More recently, the Minority Media Telecommunications Council submitted a letter urging the Commission to ensure that universal service reform is "designed to prioritize adoption," particularly in low-income, elderly, minority and disabled communities, where broadband adoption is particularly low.<sup>6</sup> Just this week, the Governor of Puerto Rico submitted a letter to the Commission stating that "[w]ith more than 40% of the population [of Puerto Rico] having income below the poverty level, the core driver of [ ] low technology penetration is income."<sup>7</sup> These comments are consistent with the Commission's prior finding, with respect to legacy universal service in Puerto Rico, that "low income support – *not* high-cost support –

is the federal program best suited to address the issues of affordability and subscribership in Puerto Rico.”<sup>8</sup>

**PRTC’s proposal is wrong because it is designed to provide a windfall to PRTC without solving Puerto Rico’s lack of broadband adoption.**

- The Commission has stated that the goal of Phase I of the CAF is to “maximize the extension of broadband deployment in areas lacking service that provides a download speed of 768 kbps or better.” The latest data available shows that 86% of Puerto Rican households have access to terrestrial fixed broadband service meeting the Commission’s minimum thresholds. Although PRTC has attempted to marginalize wireless service in order to inflate its claimed need for additional support (as it has done previously with respect to legacy universal support) – including by trying to withhold its own wireless broadband statistics from the national broadband survey – that percentage increases to 99.65% when wireless broadband is included. In other words, the Commission’s initial goal has already been achieved in Puerto Rico. As a result, providing additional support for basic broadband deployment in Puerto Rico would provide PRTC with an unnecessary and undeserved windfall, which would be lessen the effectiveness of Phase I CAF in areas that the Commission intends to target with those funds – those that are currently unserved by *any* broadband – *and* fail to correct the problem of adoption in Puerto Rico.

**PRTC’s proposal would perpetuate the inefficient application of universal service support that led the Commission to overhaul the legacy system in the first place.**

- One of the Commission’s criticisms of the legacy universal service program is that it allowed recipients to invest support inefficiently, including by “accelerat[ing] network upgrades even where a more measured approach to capital investment might be appropriate, given the demographics of the customer base and rate of consumer adoption for new services.”<sup>9</sup> PRTC’s proposal to “prioritize deployment in [Puerto Rico] until [it achieves] the same level of penetration as other areas” is a perfect example of both how the previous system faltered and why a new approach is necessary.<sup>10</sup> This is particularly true in light of the fact that a substantial portion of PRTC’s investment over the past several years has been devoted to bringing the triple- and quadruple-play (using *two* wireless networks and *two* video distribution platforms) to areas that already had plentiful infrastructure,<sup>11</sup> despite its claim that it cannot predict sufficient demand to justify advanced services.<sup>12</sup>

**PRTC has failed to abide by its commitment to invest \$1 billion in wireline infrastructure over five years, or to use its ample universal service support to extend those facilities throughout the island.**

- When America Movil acquired PRTC, it committed to invest \$1 billion over the first five years to improve communications and information services in Puerto Rico, and approval of the transaction was conditioned satisfaction of that commitment.<sup>13</sup> Although PRTC has reportedly invested substantial amounts under this commitment, it has done so in a manner that violates the spirit, and likely the letter, of that obligation. Instead of investing primarily in the improvement of wireline telecommunications and broadband facilities – as was the clear intent behind the condition – PRTC has used those funds to expand its wireless

network, overbuild a *second* wireless network and launch *two* subscription video platforms (IPTV and DBS).<sup>14</sup> When the TRB criticized PRTC's use of investment funds, calling it an "attempt to pull the wool over the eyes of the Commission" and an "attempt at obfuscation [that] must be rejected,"<sup>15</sup> America Movil simply asserted that the commitment allowed it to invest in virtually anything it liked.<sup>16</sup> Even if that is true, just last year, the Commission concluded that PRTC's "claim that it cannot invest in its network without additional high-cost support is substantially diminished, if not extinguished, by its ... commitment – unqualified with respect to universal service support – to the Commission that it would invest more than \$1 billion over five years to improve communications and information service in Puerto Rico."<sup>17</sup> Consistent with that conclusion, the Commission should not now reward PRTC for its decision not to extend broadband to unserved or underserved areas by granting it additional subsidies expressly for that purpose.

- Moreover, PRTC has failed to extend broadband (or even basic voice service) throughout an area roughly the size of Connecticut despite being one of the largest recipients of legacy universal service support. For example, even if amounts allegedly invested under the \$1 billion obligation are excluded, PRTC still received nearly \$100 million in high-cost universal service support last year, yet it recently represented to the Commission that "no improvement [in broadband deployment] has been made since last year."<sup>18</sup>

**PRTC has shown a lack of candor in its requests for additional broadband support and has demonstrated that it cannot be trusted to invest funds made available to it in a manner that will advance universal service.**

- PRTC has misrepresented its need for additional broadband support: PRTC has repeatedly told the Commission in this proceeding that there is no private business case for deploying broadband in Puerto Rico without additional federal support and that doing so would be uneconomical in most areas.<sup>19</sup> However, for *years*, PRTC has represented precisely the opposite to the Telecommunications Regulatory Board of Puerto Rico ("TRB"): that it can profitably deploy broadband to a substantial portion of the island in five years without any outside funding.<sup>20</sup> PRTC has provided the TRB business and deployment plans that allegedly demonstrate its ability to do so.
- PRTC has manipulated broadband measurements in order to artificially deflate broadband availability statistics in Puerto Rico: Faced with the reality that broadband is significantly more available in Puerto Rico than previous data had indicated, PRTC sought to deflate Connect Puerto Rico's broadband measurements by withholding all wireless data and urging Connect Puerto Rico to use incomplete data sets representing only 70% of its wireline deployment, despite Connect Puerto Rico's repeated requests for complete information.<sup>21</sup> The clear purpose of these actions is to reduce the appearance of broadband availability in Connect Puerto Rico's statistics and mapping and artificially support PRTC's claims that there is no broadband in Puerto Rico.
- PRTC has failed to account for universal service support that it previously received: In two separate audits conducted in 2010, the Universal Service Administration Company found that PRTC could not locate numerous assets it had used to justify receipt of universal service funds, and that PRTC had therefore been overpaid more than \$1 million of universal service

support.<sup>22</sup> PRTC's apparent inability to account for its federally supported assets may also explain PRTC's allegations that broadband does not exist in Puerto Rico. Notably, PRTC has challenged these findings not on the basis that they were legitimate expenditures, but on the grounds that it was not legally required to keep records.<sup>23</sup>

- <sup>1</sup> Compare U.S. Census Bureau, San Juan-Caguas-Guaynabo, PR Metro Area Selected Economic Characteristics: 2005-2009, available at [http://factfinder.census.gov/servlet/ADPTable?\\_bm=y&-context=adp&-qr\\_name=ACS\\_2009\\_5YR\\_G00\\_DP5YR3&-ds\\_name=ACS\\_2009\\_5YR\\_G00\\_-tree\\_id=5309&redoLog=true&-\\_caller=geoselect&-geo\\_id=31000US41980&-format=&-\\_lang=en](http://factfinder.census.gov/servlet/ADPTable?_bm=y&-context=adp&-qr_name=ACS_2009_5YR_G00_DP5YR3&-ds_name=ACS_2009_5YR_G00_-tree_id=5309&redoLog=true&-_caller=geoselect&-geo_id=31000US41980&-format=&-_lang=en) (using 2009 inflation-adjusted dollars) (last visited October 13, 2011) and U.S. Census Bureau, United States and States, R1901. Median Household Income (In 2009 Inflation-Adjusted Dollars), available at [http://factfinder.census.gov/servlet/GRTTable?\\_bm=y&-geo\\_id=01000US&-\\_box\\_head\\_nbr=R1901&-ds\\_name=ACS\\_2009\\_1YR\\_G00\\_-redoLog=false&-format=US-30&-mt\\_name=ACS\\_2008\\_1YR\\_G00\\_R1901\\_US30&-CONTEXT=grt](http://factfinder.census.gov/servlet/GRTTable?_bm=y&-geo_id=01000US&-_box_head_nbr=R1901&-ds_name=ACS_2009_1YR_G00_-redoLog=false&-format=US-30&-mt_name=ACS_2008_1YR_G00_R1901_US30&-CONTEXT=grt) (last visited October 13, 2011).
- <sup>2</sup> Connect Puerto Rico Residential Technology Assessment Results (in compliance with Island and NTIA requirements) at 76, available at [http://en.connectpr.org/\\_documents/PR\\_RTA\\_2010Q1\\_FINAL.pdf](http://en.connectpr.org/_documents/PR_RTA_2010Q1_FINAL.pdf)
- <sup>3</sup> See Connect Puerto Rico Island Wide Broadband Inventory Maps, available at [http://en.connectpr.org/mapping/islandwide\\_broadband\\_inventory\\_maps.php](http://en.connectpr.org/mapping/islandwide_broadband_inventory_maps.php) (current as of Oct. 2011) (last visited Oct. 20, 2011).
- <sup>4</sup> Connected Nation Notice of Ex Parte Presentation, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, at 2 (Mar. 16, 2011).
- <sup>5</sup> Comments of Connected Nation, Inc., *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92), *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45), *Lifeline and Link-Up*, WC Docket No. 03-109, at 3-4, 20, 22 (Apr. 18, 2011).
- <sup>6</sup> Letter from David Honig, President and Executive Director, Minority Media & Telecommunications Council, to Chairman Genachowski and Commissioners, Federal Communications Commission, at 2, 3-4 (Oct. 14, 2011).
- <sup>7</sup> Letter from Governor Fortuño of Puerto Rico to Chairman Genachowski, Federal Communications Commission, at 5 (Oct. 17, 2011).
- <sup>8</sup> Order and Notice of Proposed Rulemaking, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, at ¶ 34 (Apr. 16, 2010) ("*Insular Order*").
- <sup>9</sup> Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92), *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45), *Lifeline and Link-Up*, WC Docket No. 03-109, at ¶ 171 (Feb. 9, 2011).
- <sup>10</sup> Reply Comments of PRTC, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, at 3 (Aug. 11, 2010).
- <sup>11</sup> See, e.g., Comments of San Juan Cable LLC in Opposition to Petition for Reconsideration of PRTC, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, at 8-9 (Jun. 14, 2010).
- <sup>12</sup> Comments of PRTC, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, at 10 (Jul. 12, 2010).

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- <sup>13</sup> See Memorandum Opinion and Order and Declaratory Ruling, *Verizon Communications, Inc., Transferor, and America Movil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, WT Docket No. 06-113, at ¶ 36 (Mar. 26, 2007).
- <sup>14</sup> See Comments of San Juan Cable LLC, *supra* note 11.
- <sup>15</sup> TRB Motion to Reject, *Verizon Communications, Inc., Transferor, and America Movil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, WT Docket No. 06-113, at 3 (Feb. 7, 2008).
- <sup>16</sup> America Movil Opposition to Motion to Reject, *Verizon Communications, Inc., Transferor, and America Movil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, WT Docket No. 06-113, at 2-5 (Feb. 20, 2008).
- <sup>17</sup> *Insular Order*, *supra* note 8, at ¶ 29.
- <sup>18</sup> Letter from Thomas J. Navin, counsel to PRTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, at n.1 (Oct. 17, 2011).
- <sup>19</sup> See, e.g., San Juan Cable LLC Notice of Ex Parte, WC Docket No. 10-90 (Jan. 31, 2011).
- <sup>20</sup> *Id.*
- <sup>21</sup> Connected Nation Notice of Ex Parte Presentation, WC Docket No. 10-90, WC Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, WC Docket No. 01-92, WC Docket No. 96-45, WC Docket No. 03-109, Declaration of Christopher Pedersen (Jun. 24, 2011).
- <sup>22</sup> PRTC's Request for Review of Decision of the Universal Service Administrator, *Request for Review by P.R. Tel. Co. of Decision of the Universal Service Administrator*, WC Docket No. 08-71 (Dec. 6, 2010); PRTC's Request for Review of Decision of the Universal Service Administrator, *Request for Review by P.R. Tel. Co. of Decision of the Universal Service Administrator*, WC Docket No. 08-71 (Jan. 11, 2011).
- <sup>23</sup> *Id.*